

1 E. MARTIN ESTRADA  
United States Attorney  
2 MACK E. JENKINS  
Assistant United States Attorney  
3 Chief, Criminal Division  
STEVEN M. ARKOW (Cal. Bar No. 143755)  
4 Assistant United States Attorneys  
Major Frauds Section  
5 1100 United States Courthouse  
312 North Spring Street  
6 Los Angeles, California 90012  
Telephone: (213) 894-6975  
7 Facsimile: (213) 894-6269  
E-mail: steven.arkow@usdoj.gov  
8

9 Attorneys for Plaintiff  
UNITED STATES OF AMERICA  
10

UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,  
13

Plaintiff,  
14

v.  
15

YOSSI ENGEL,  
16

Defendant.  
17  
18

No. CR 23-213-MEMF-1

GOVERNMENT'S SENTENCING POSITION  
FOR DEFENDANT YOSSI ENGEL

Hearing Date: December 15, 2023

19 Plaintiff United States of America, by and through its counsel  
20 of record, the United States Attorney for the Central District of  
21 California and Assistant United States Attorney Steven M. Arkow,  
22 hereby files Government's Sentencing Position for defendant Yossi  
23 Engel.  
24

25 This Government's Sentencing Position is based upon the attached  
26 memorandum of points and authorities, the files and records in this  
27 //

28

1 case, including the presentence report ("PSR"), and such further  
2 evidence and argument as the Court may permit.

3 Dated: December 1, 2023

Respectfully submitted,

4 E. MARTIN ESTRADA  
United States Attorney

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6 MACK E. JENKINS  
Assistant United States Attorney  
Chief, Criminal Division

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STEVEN M. ARKOW  
Assistant United States Attorneys

10 Attorneys for Plaintiff  
11 UNITED STATES OF AMERICA  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant Yossi Engel ("defendant") cultivated a fraudulent  
4 reputation, portraying himself as a business success, a trustworthy  
5 and charitable person who induced victims to give him more than \$25  
6 million by lying about transactions to install security cameras and  
7 develop real estate. To gain the trust of victims, he sought  
8 introductions and referrals within the Orthodox Jewish communities in  
9 the Los Angeles and New York areas.

10 By exploiting the goodwill engendered by affinity within his  
11 religious community, defendant, motivated by personal greed and  
12 opportunism, defrauded victims. Affinity fraud, like other financial  
13 fraud, causes economic harm, but the harm to the particular community  
14 impacted and society at large may be enhanced because the victims are  
15 betrayed by someone they felt they shared a connection to and a  
16 common bond. Indeed, a defendant is uniquely able to gain the  
17 confidence of his victims by taking advantage of that bond. See  
18 Christine Hurt, "Evil Has A New Name (and A New Narrative): Bernard  
19 Madoff," 2009 Mich. State L. Rev. 947, 976 (2009) ("[M]any Ponzi  
20 schemes can be described as affinity frauds, because community ties  
21 and the victim's familiarity with other investors decrease skepticism  
22 of the otherwise too-good-to-be-true promises of financial reward.").

23 Defendant perpetuated two fraudulent pitches:

24 (1) Defendant falsely represented that he needed funds,  
25 purportedly to purchase security cameras and equipment that defendant  
26 would install for his customers, and falsely promised that he would  
27 repay the victims from fees generated from installation jobs; and  
28

1 (2) Defendant falsely represented that he needed funds to  
2 purchase property and apartment buildings in Israel to remodel and  
3 develop additional housing units, and falsely promised victims that  
4 he would then sell and share the profits from those developments with  
5 them.

6 But, as his victims came to learn the truth, defendant was not a  
7 successful businessman or trustworthy charitable congregant. He was  
8 simply using other people's money to develop a false reputation for  
9 personal gain.

10 Fraud crimes that involve substantial financial losses warrant a  
11 commensurately significant sentence sufficient to deter imitators.  
12 Fraud crimes that are manipulative, take money from multiple victims,  
13 and occur over a long period, likewise, warrant a commensurately  
14 substantial term of imprisonment to properly account for the  
15 seriousness of the crime. This case warrants a substantial custodial  
16 term for these reasons.

17 Defendant's criminal conduct was harmful, repeated, and  
18 calculated. The government therefore requests that the Court impose  
19 a guidelines sentence of 51 months of imprisonment (the low end of  
20 defendant's applicable advisory guidelines range), three years of  
21 supervised release, a \$100 special assessment, and a restitution  
22 order to multiple victims in the total amount of \$11,758,030.98.  
23 This sentence serves the goals of sentencing and is necessary to  
24 deter not only defendant, but others from similar schemes.

1 **II. OFFENSE CONDUCT<sup>1</sup>**

2 Defendant designed and solely carried out a substantial  
3 investment fraud and Ponzi scheme that impacted multiple victims who  
4 loaned funds to defendant based on false promises. From about 2018  
5 through the beginning of 2021, defendant solicited and borrowed  
6 millions and millions of dollars from victims in the Orthodox Jewish  
7 community, some of whom he befriended, based on false claims that  
8 their money would be used to: (a) purchase and install security  
9 camera equipment and (b) finance real estate development in Israel.  
10 Defendant's actions caused more than \$11 million in actual losses to  
11 these victims.

12 Defendant, a resident of Los Angeles, California,  
13 founded and was the sole owner of iWitness Tech, LLC ("iWitness"), a  
14 company in the business of installing residential and commercial  
15 security systems and cameras. (PSR ¶14).

16 Defendant directed another person, identified as Individual No.  
17 1, to solicit from other persons loans to and investments with  
18 defendant and to serve as an intermediary between those persons and  
19 defendant in connection with such loans and investments. (PSR ¶15).

20 The scheme to defraud operated as follows:

21 a. To meet prospective victims with Orthodox Jewish  
22 communities and engender their trust, defendant cultivated a  
23

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24 <sup>1</sup> Unless stated otherwise, all facts recited herein are based on  
25 the offense conduct as set forth in paragraphs 13-26 of the (revised)  
26 PSR (Dkt. 51) and the stipulated factual basis in the plea agreement  
27 as set forth in paragraphs 17-21 of the plea agreement (Dkt. 19).  
28 Defendant has not objected to the factual findings of the offense  
conduct in the PSR, and defendant stipulated to the factual basis set  
forth in the plea agreement. On September 25, 2023, the United  
States Probation Office ("USPO") filed the PSR (Dkt. 48). On October  
10, 2023, the USPO filed the (revised) PSR (Dkt. 51). On May 3,  
2023, the government filed the plea agreement (Dkt. 19).

1 reputation within the Orthodox Jewish community as a trustworthy and  
2 charitable person based on his activities as a member of an Orthodox  
3 synagogue in Los Angeles. (PSR ¶16).

4 b. Relying on the reputation he cultivated, defendant  
5 also sought introductions and referrals to other individuals in the  
6 Orthodox Jewish community from whom he would solicit loans and  
7 investments. (PSR ¶17).

8 c. Defendant also solicited, and directed Individual No.  
9 1 to solicit, members of Orthodox Jewish communities (primarily in  
10 Los Angeles and New Jersey) to lend funds to and invest funds with  
11 defendant and defendant's company. (PSR ¶18).

12 d. Defendant made, and directed Individual No. 1 to make,  
13 false and fraudulent representations and promises to victims to  
14 induce them to lend and invest funds with defendant and defendant's  
15 company, including through the following two pitches:

16 (i) Defendant's Company iWitness: Defendant falsely  
17 represented that he needed funds, purportedly to purchase security  
18 cameras and equipment that he would install for iWitness's customers,  
19 and falsely promised that defendant would repay the victims from fees  
20 generated from installation jobs of defendant's security business;  
21 and

22 (ii) Defendant's Real Estate Development in Israel:  
23 Defendant falsely represented that he needed funds to purchase  
24 property and apartment buildings in Israel to remodel and develop  
25 additional housing units, and falsely promised victims that he would  
26 then sell and share the profits from those developments with them.  
27 (PSR ¶19).



1           ii. To induce victims to lend and invest money and to  
2 provide his solicitations with a veneer of legitimacy, defendant:

3           a) often provided victims promissory notes signed by defendant  
4 and sometimes guaranteed by Individual No. 1 that promised repayment  
5 of the loan principal typically within weeks to six months plus  
6 interest of typically between 10 and 60 percent on an annualized  
7 basis;

8           b) represented that the promissory notes were secured by an  
9 "obligation to I-Witness" based on iWitness's installation jobs with  
10 customers, in some instances providing victims with false and  
11 fraudulent iWitness invoices or invoice numbers purporting to show  
12 iWitness' sales to customers;

13           c) provided victims with false contracts, pictures of apartment  
14 plans and fabricated documents, such as property deeds and land  
15 registry documents, purporting to show defendant's ownership of  
16 certain apartments; and

17           d) in order to create the false impression and create the  
18 appearance that defendant had special connections and influence with  
19 the mayor of Bnei Brak (a city near Tel Aviv, Israel, with a high  
20 concentration of Orthodox Jewish residents) that would enable  
21 defendant to fast track the approval and the permitting process to  
22 build additional housing units in apartment buildings, defendant  
23 provided victims a video showing defendant with the mayor, which  
24 defendant falsely represented was a meeting at which the mayor  
25 expressed support for defendant's projects. (PSR ¶20).

26           Defendant knew the representations and promises he made and  
27 directed Individual No. 1 to make were false because defendant:  
28

1           iii. did not intend to, and did not, use the victims'  
2 funds to conduct the business activities that defendant claimed he  
3 would use the funds for; and

4           iv. knew that iWitness had not and would not perform  
5 the work documented in the invoices, which defendant had fabricated;

6           v. did not own or develop the land reflected on the  
7 fabricated land registry and other documents he provided to the  
8 victims; and

9           vi. had no special relationship with the Bnei Brak  
10 mayor. (PSR ¶21).

11           e. Instead, as defendant knew, he had used the victims'  
12 funds for his own personal benefit and lifestyle expenditures, and to  
13 make purported repayments to other victims in order to lull those  
14 victims into believing that their loans/investments were achieving  
15 the promised return through iWitness's business activities and  
16 defendant's Israeli real estate developments (rather than coming from  
17 new victims' funds) and dissuade those victims from complaining to  
18 law enforcement or seeking the immediate full return of their  
19 loan/investment. (PSR ¶22).

20           f. At the direction of defendant, the victims, relying on  
21 defendant's false and fraudulent representations and concealment of  
22 facts, sent funds, by interstate wire and check, to defendant's  
23 personal accounts and iWitness business bank accounts defendant  
24 controlled. (PSR ¶23).

25           To further and conceal the fraudulent scheme, when defendant did  
26 not have funds to cover his obligations to the victims, defendant  
27 urged victims to postpone repayment and roll over their prior loans  
28 and investments into new loans and investments. (PSR ¶24).

1 With respect to the specific conduct in Count One, on December  
 2 29, 2020, for the purpose of executing the scheme to defraud  
 3 described above, defendant caused victim A.L. to wire \$460,000 from  
 4 A.L.'s personal bank account at U.S. Bank to an  
 5 iWitness Community West Bank account ending in 2353 that defendant  
 6 controlled by means of wire communications in interstate commerce.  
 7 (PSR ¶25).

8 Through the fraudulent scheme described above, defendant caused  
 9 more than 10 victims to pay more than approximately \$25 million, and  
 10 suffer actual losses of more than \$11,000,000. (PSR ¶26; see also  
 11 Defendant's Exhibit App. 10, Defendant's Part One of Appendix 10,  
 12 Volume Two, of Defendant's Appendices in Support of Reply to  
 13 Opposition to Reconsideration of Detention Order, Dkt. 38, at 5).

### 14 **III. SENTENCING GUIDELINES CALCULATION**

15 The USPO calculated a total offense level of 24 based on the  
 16 following calculations:

17	Base Offense Level:	7	USSG § 2B1.1(a) (1)
18	Specific Offense		
19	Characteristics:		
20	Loss of more than \$9.5	+20	USSG § 2B1.1(b) (1) (K)
21	million but not more than		
22	\$25 million		
23	Offense involved 10	+2	USSG § 2B1.1(b) (2) (A) (i)
24	or more Victims		
25	Acceptance of	-3	USSG § 3E1.1
26	Responsibility		
27	Zero-Point Offender	-2	USSG § 4C1.1
28	Reduction		
	Total Offense Level:	24	

(PSR ¶¶35-48, at 9-10).

1       Based upon a total offense level of 24 and a criminal history  
2 category I, the USPO calculated an applicable advisory guidelines  
3 imprisonment range of 51 to 63 months. (PSR at 3).

4       This USPO calculation is consistent with the plea agreement  
5 (Dkt. 19, ¶ 12 at 7-8), except even more favorable to defendant in  
6 light of the since-enacted 2023 U.S.S.G. § 4C1.1 for zero-point  
7 offender reduction, whereby defendant has been credited with an  
8 additional reduction of two levels not contemplated within the plea  
9 agreement which was filed on May 3, 2023 prior to the amendment. The  
10 government concurs with this two-level reduction to offense level 24.

11       Defendant has not disputed any of the factual findings, offense  
12 level calculations, or the restitution amounts in the PSR.

13       The government has provided to defendant interview reports of  
14 the victims that illustrate how defendant's fraud has impacted their  
15 lives and imposed financial burdens. Moreover, defendant's victims  
16 were not super wealthy or institutional investors, but middle-class  
17 citizens of the religious community.

#### 18 **IV. RESTITUTION**

19       Consistent with the PSR, the parties stipulated in the plea  
20 agreement that restitution is mandatory in this case pursuant to 18  
21 U.S.C. § 3663A and that the Court may order restitution to any victim  
22 of the offense and relevant conduct. (Dkt. 19 ¶ 6; PSR ¶98, at 15).  
23 The government concurs with the USPO's calculation that restitution  
24 should be ordered in the amount of \$11,758,030.98 to the victims  
25 identified by the USPO in the (revised) USPO Recommendation letter  
26  
27  
28

1 dated October 6, 2023 in the Confidential Victim List. (Dkt. 50 at  
2 1-2).<sup>2</sup>

3 **V. THE GOVERNMENT'S SENTENCING RECOMMENDATION**

4 The government believes that a guidelines sentence is necessary  
5 to satisfy the statutory sentencing goals, and that a low-end  
6 sentence is sufficient, but not greater than necessary, to achieve  
7 those goals. In particular, a low-end end term of imprisonment of 51  
8 months is necessary to account for the egregiousness of defendant's  
9 crimes, to justly punish him, and to deter would-be offenders from  
10 committing similar crimes.

11 Pursuant to the sentencing factors set forth in 18 U.S.C.  
12 § 3553(a), and consistent with the recommendation of the USPO, the  
13 government recommends that defendant be sentenced to 51 months in  
14 custody, that is, the low end of his uncontested applicable  
15 guidelines range (51-63 months), one year of supervised release, a  
16 \$100 special assessment, and a restitution order of \$11,758,030.98.  
17 (Dkt. 50 at 2).

18 **A. The Nature and Circumstances of the Offense, the**  
19 **Seriousness of the Offense, and the Need to Provide Just**  
20 **Punishment All Support a 51-Month Sentence**

21 The seriousness of the overall scheme, the magnitude of the  
22 loss, the number of individual victims who put their trust in and  
23 gave their money to defendant, and that the offense involved numerous  
24 and repeated fraudulent acts by defendant weigh in favor of imposing  
25 a substantial custodial sentence of 51 months.

26 While not definitive, the Guidelines range provides the starting  
27 point for finding a reasonable sentence and must then be considered

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28 <sup>2</sup> A copy of the victim list with amounts of actual loss still  
owed in restitution was produced to defendant in discovery and to the  
USPO.

1 with the factors set forth in 18 U.S.C. § 3553(a). See United States  
2 v. Cantrell, 433 F.3d 1269, 1279 (9th Cir. 2006). "To comply with  
3 the requirements of Booker, the district court must have sufficiently  
4 considered the Guidelines as well as the other factors listed in §  
5 3553(a). This requirement does not necessitate a specific  
6 articulation of each factor separately, but rather a showing that the  
7 district court considered the statutorily designated factors in  
8 imposing a sentence." United States v. Nichols, 464 F.3d 1117, 1125  
9 (9th Cir. 2006) (quoting United States v. Knows His Gun, 438 F.3d  
10 913, 918 (9th Cir. 2006)).

11 The Section 3553(a) factors are as follows:

- 12 1) The nature and circumstances of the offense and the  
13 history and characteristics of the defendant;
- 14 2) The need for the sentence imposed -
  - 15 (A) To reflect the seriousness of the offense, to  
16 promote respect for the law, and to provide just  
17 punishment for the offense;
  - 18 (B) To afford adequate deterrence to criminal  
19 conduct;
  - 20 (C) To protect the public from further crimes of the  
21 defendant; and
  - 22 (D) To provide the defendant with needed educational  
23 or vocational training, medical care, or other  
24 correctional treatment in the most effective manner;
- 25 3) The kinds of sentences available;
- 26 4) The kinds of sentence and the sentencing range  
27 established for the offense and the defendant as set forth  
28 in the Sentencing Guidelines;

1        5) Any pertinent policy statement issued by the Sentencing  
2        Commission;

3        6) The need to avoid unwarranted sentence disparities among  
4        defendants with similar records who have been found guilty  
5        of similar conduct; and

6        7) The need to provide restitution to any victims of the  
7        offense.

8        See 18 U.S.C. § 3553(a).

9        While all the statutory sentencing factors support a significant  
10       custodial sentence in this case, such a sentence is most strongly  
11       supported here by the need for adequate general and specific  
12       deterrence and the seriousness of defendant's crime. The government  
13       believes that the factors set forth in 18 U.S.C. § 3553(a)(1) suggest  
14       custody of 51 months and that such a sentence would be "sufficient,  
15       but not greater than necessary" to comply with the purposes  
16       enumerated in 18 U.S.C. § 3553(a)(2), discussed further below.

17        **B.    18 U.S.C. § 3553(a)(1)**

18        18 U.S.C. § 3553(a)(1) requires the Court to consider the nature  
19       and circumstances of the offense and the history and characteristics  
20       of defendant. These factors warrant a sentence of 51 months  
21       imprisonment.

22        Defendant's scheme, which took in more than \$25 million in  
23       proceeds, requires a serious sentence to deter others who might  
24       believe such a substantial sum of money incentivizes an enticing risk  
25       of likely not being prosecuted and sentenced to custody. Defendant  
26       faked invoices and invoice numbers to hoodwink victims into thinking  
27       defendant had lucrative sales contracts with customers to purchase  
28       and install security surveillance equipment. Defendant faked

1 contracts, pictures of apartment plans, and property deeds and land  
2 registry documents to hoodwink victims into thinking defendant owned  
3 and would build certain apartment units. Defendant faked a video  
4 showing defendant purportedly in a meeting with the mayor of a city  
5 in Israel, to trick victims into thinking that defendant had special  
6 influence with the city to fast track the approval and permitting  
7 process to build additional housing. Defendant directed another  
8 individual on defendant's behalf to solicit members of Orthodox  
9 Jewish communities to lend funds to defendant. Defendant directed  
10 this same individual to make false promises to victims. All the  
11 while, defendant knew the false promises, false documents, and video  
12 were bogus as defendant did not intend to and did not use the  
13 victims' money to conduct the business activities that defendant  
14 claimed he would use their monies for, that he would not perform the  
15 security surveillance work, per the fabricated invoices, that he did  
16 not own and did not develop the land on the fabricated documents, and  
17 that had no such special inside relationship with the mayor.  
18 Instead, by not using the victim funds as promised, but rather for  
19 personal benefit and lifestyle expenditures and to pay prior victims  
20 in order to lull them into believing that their loans were achieving  
21 the promised returns, defendant's criminal conduct defrauded at least  
22 11 victims of more than \$11 million in actual losses. (PSR ¶38).  
23 The scheme occurred over two years. As the scheme was collapsing and  
24 when defendant did not have the funds to cover his obligations to the  
25 victims, instead of owning up to his fraud and stopping, defendant  
26 urged his victims to postpone repayment and roll over their prior  
27 loans and investments into new ones.



1 Further, defendant carried out multiple deceptions that required  
2 his deliberative planning and sustained attention over years and  
3 convinced his victims, themselves businessmen and familiar with  
4 lending money, that he was a successful and legitimate businessman.  
5 This was not a one-time crime of opportunity or a single venture  
6 where in an aberrant moment he thought he could repay a particular  
7 victim.

8 Taking into account the extent and scope of the fraud, the loss,  
9 the number of individual victims, defendant's receipt of funds from  
10 individuals -- individuals from his religious community whose favor  
11 he gained and trust he betrayed -- and defendant's use of their funds  
12 for personal use, which factors are accounted for in the applicable  
13 advisory guidelines calculations, a 51-month sentence of imprisonment  
14 is appropriate as a sufficient but not greater than necessary  
15 sentence to accomplish the goals of sentencing.

16 The consequences of defendant's dishonesty are not only  
17 financial but his victims endured an emotional cost. Defendant's  
18 greed hurt reputations and broke relationships in the communities he  
19 solicited money. Though the Court can order restitution, the  
20 likelihood that defendant will ever repay more than a small portion  
21 of the more than \$11 million in losses he caused is slim. Defendant  
22 left the United States to move to Israel in early 2021, purportedly  
23 for a fresh start to "start a new business" and "to pay [his victims]  
24 back," (Romanoff Report,<sup>3</sup> at 14 of 21), but the government is not  
25 aware that defendant has repaid his victims anything since then. See  
26

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27  
28 <sup>3</sup> Defendant provided a psychologist evaluation, in the form of a  
letter dated September 5, 2023, from Richard I. Romanoff, Ph.D., a  
licensed psychologist (Dkt. 54) ("Romanoff Report").

1 United States v. Rangel, 697 F.3d 795, 803-804 (9th Cir. 2012) (while  
2 defendant's inability to pay is not an aggravating factor, district  
3 court could note such factor in "focus[ing] instead on the impact on  
4 the victims").

5 One victim (D.C.) invested and lost over \$1.4 million of his  
6 father's money for both the security camera business and real estate  
7 projects. The victim's father was incapable of investing on his own  
8 because he had serious medical afflictions. This victim captured the  
9 significant of the impact: "The money [we] invested [for their  
10 father] with Engel was everything to [us]." The victim had to look  
11 for extra work because he "was having trouble paying for [his]  
12 house."<sup>4</sup>

13 Meanwhile, defendant had legitimate opportunities for steady  
14 employment. For ten years, defendant had a business in surveillance  
15 security. (PSR ¶66). However, he chose to use his relationships and  
16 skills to commit fraud.

17 Defendant caused harm to multiple victims. He did so  
18 intentionally. Only now, after having been arrested while at Los  
19 Angeles Airport about to board a flight back to Israel and facing  
20 considerable prison time, has defendant admitted that he committed  
21 criminal fraud.<sup>5</sup>

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26 <sup>4</sup> The interview report of victim D.C. was produced to defendant  
27 in discovery and also provided to the Probation Office. (USAO\_ENGEL\_  
697-698).

28 <sup>5</sup> Defendant could best demonstrate his contrition by assisting  
the government in tracing any recoverable assets for victims. To  
date, he has not done so.

**C. A Guidelines Sentence of 51 Months Is Necessary to Afford Adequate Deterrence**

The need for general deterrence is paramount in this case. Economic crimes like defendant's are deterrable so long as they are met with a commensurate term of imprisonment. In drafting § 3553, Congress specifically confirmed that "[t]o deter others from committing the offense ... is particularly important in the area of white collar crime." S. Rep. No. 98-255, at 76 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3259. Congress was particularly concerned with the fact that "[m]ajor white collar criminals often are sentenced to ... little or no imprisonment," which the offenders disregard as "a cost of doing business." Id. A guidelines sentence is necessary to ensure those costs for the next would-be Ponzi schemer outweigh the potential benefits.

The profile of white-collar criminals also demonstrates the increased value of general deterrence. "Because economic and fraud-based crimes are 'more rational, cool, and calculated than sudden crimes of passion or opportunity,' these crimes are 'prime candidate[s] for general deterrence.'" United States v. Martin, 455 F.3d 1227, 1240 (11th Cir. 2006) (quoting Stephanos Bibas, White-Collar Plea Bargaining and Sentencing After Booker, 47 Wm. & Mary L. Rev. 721, 724 (2005)). Further, given the challenges in uncovering fraud offenses and proving that they are fraud, as opposed to unsuccessful business ventures, particularly, in light of limited and over-burdened investigative resources in Los Angeles, the need for general deterrence in white-collar cases is fundamental.

Sentences recently imposed by federal courts nationwide, and across a range of large Ponzi schemes, confirm that a sentence of 51

1 months of imprisonment fits the crime in this case. See Comparative  
2 Sentencing Date (from United States Sentencing Commission Judiciary  
3 Sentencing Information (JSIN) platform (during last five fiscal  
4 years, similarly situated fraud offenders with same offense level and  
5 criminal history received, on average, 51 months) (PSR ¶100).

6 A 51-month sentence would provide the sort of corrective  
7 envisioned by Congress and the U.S. Sentencing Commission. To  
8 provide adequate deterrence the sentence should account both for the  
9 ill-gotten gains of large-scale investment fraud schemes and the low  
10 likelihood in uncovering and prosecuting them. Defendant's  
11 guidelines range appropriately takes into account these concerns, and  
12 a low-end sentence of 51 months considers the need for general  
13 deterrence.

14 **D. Defendant's Personal Background Provides No Basis for a**  
15 **Downward Departure or Variance**

16 In mitigation, defendant submits a psychologist's report<sup>6</sup> that  
17 describes defendant's escalating pattern of behavior that developed  
18 "an out of control [sic] need to take money from others, that in  
19 [defendant's] head he believed he could pay back." (PSR ¶¶71-74).  
20 However, there is no indication that defendant: (1) did not  
21 understand the wrongfulness of his actions at the time; or  
22 (2) believed that he could repay his victims (other than by taking  
23 more money from other victims, the classic *modus operandi* of a Ponzi  
24 scheme). Indeed, to the contrary, as even the psychologist's report  
25 makes clear, defendant admitted "fabricating records and knowingly  
26

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27  
28 <sup>6</sup> The psychologist met five times with defendant, all after  
defendant committed the underlying criminal conduct and after  
defendant was arrested.

1 lying about the reasons why he was borrowing money. . . . [and] [h]e  
2 indicated there was never any actual real estate deal in Israel, and  
3 he knew his company in the United States would never generate  
4 sufficient money to pay back the borrowers who became victims of his  
5 fraudulent activity." (Romanoff Report, at 14 of 21). Instead, with  
6 it so obvious, even by defendant's own admission, to see that "I  
7 always knew something was wrong," defendant opted to have a lifestyle  
8 "overspending" money, "indulged in unnecessary luxuries" and "just  
9 wanting to have fun." (Romanoff Report, at 8, 13, 14, 16 of 21)  
10 (emphasis added).

11 There was no documentation of any previous history of mental  
12 health diagnosis (or substance abuse) or treatment prior to the  
13 criminal activity. (Romanoff Report, at 2). Notwithstanding  
14 defendant's claim of multi-generational (or inter-generational)  
15 trauma and family dynamics relating to the absence of his father  
16 during his teenage years (PSR ¶¶71-74), defendant's childhood life  
17 before his father's incarceration, also for fraud, was "positive"  
18 (PSR ¶60). As an adult, defendant has been married to his wife since  
19 he was 22 and had the benefit of support and stability from his  
20 wife's family eventually owning a business where he sold security  
21 systems. (PSR ¶¶63-64).

22 To the extent any mental evaluation undertaken in 2023 can be  
23 relevant to sentencing defendant for crimes committed about five  
24 years ago, it should have focused on defendant's mental state at the  
25 time of his commission of the instant offense. However, the  
26 psychologist's interviews of defendant, all self-reported by  
27 defendant himself, occurred recently in 2023 with defendant intending  
28 them to be provided to the Court so that he could request a lower

1 sentence. The psychologist was not present during the criminal  
2 activity, did not evaluate defendant during the criminal activity,  
3 and did not meet with any of the victims from whom defendant took  
4 money based on lies.<sup>7</sup>

5 In short, the defense evaluation conflates result with cause.  
6 It uses defendant's criminal conduct (result) as evidence that  
7 defendant's mental health and trauma led to his criminal conduct  
8 (cause). The psychological conditions attributed to defendant should  
9 not be blamed as the cause of defendant's criminal behavior. Other  
10 persons with depression or similar mental health conditions do not  
11 commit multi-million fraud and Ponzi schemes against others in their  
12 own religious community. Defendant should not be held morally less  
13 accountable for his intentional acts, especially, given defendant's  
14 intelligence, education, and understanding of the wrongfulness of his  
15 conduct.

16 Defendant's claims appear for the first time in an evaluation<sup>8</sup>  
17 prepared for this sentencing by a privately paid-for psychologist.<sup>9</sup>  
18 While the report purports to be objective and impartial, it should  
19 not be overlooked that the psychologist provides a fee-based service  
20

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21 <sup>7</sup> The psychologist was provided by the defense with FBI  
22 interview reports of a handful of the victims, but not all victims,  
23 and most notably, he apparently did not review the interview of  
24 Individual No. 1, arguably a pivotal person whom defendant recruited  
25 to solicit money from others and to serve as an intermediary between  
defendant and those other victims, and himself a victim owed hundreds  
of thousands of dollars in restitution. (PSR ¶¶15, 18-20; USPO  
Recommendation (Dkt. 50) at 1).

26 <sup>8</sup> The evaluation did not include any cognitive or personality  
27 assessments to establish the accuracy and credibility of the  
assertions relating to the reasons for defendant's behavior.

28 <sup>9</sup> Counsel for defendant informed the government that as of  
September 22, 2023, the psychologist received approximately \$7,500  
for a portion of his work and agreed to cap his fee at \$15,000.

1 for convicted defendants, a purpose of which is to "produc[e] reports  
2 that focus on the presentation of mitigating factors for purposes of  
3 sentencing, and these reports have often led to dramatic improvements  
4 in overall case outcome" including influencing a judge's "decision to  
5 deviate from a more severe sentence."

6 <http://richardromanoffphd.com/index.htm> (in website's *Biography*  
7 section). The psychologist advertises his services to "provide  
8 [criminal defense] attorneys with assistance in helping them to  
9 incorporate relevant mental health and substance abuse difficulties  
10 as they develop their overall case strategy." (in website's *Services*  
11 *Provided* section).

12 Most important, it should be noted that many criminal  
13 defendants, especially, in the Central District of California, have  
14 faced extraordinary family hurdles and experienced trauma, and are  
15 not granted a downward variance or departure. As the guidelines  
16 state: "Lack of guidance as a youth and similar circumstances  
17 indicating a disadvantaged upbringing are not relevant grounds in  
18 determining whether a departure is warranted." U.S.S.G. § 5H1.12.  
19 Nothing in defendant's background suggests he had no alternatives in  
20 life but to undertake "escapist coping mechanisms" to commit this  
21 crime (indeed, he had a wife, three children, and a business) or  
22 failed to grasp the gravity of his crime. (Romanoff Report, at 2).  
23 To the contrary, defendant's education and upbringing, particularly,  
24 the moral values instilled during studying and training in yeshiva  
25 (PSR ¶60) suggest he could have stayed on a law-abiding path other  
26 than the one he chose. Thus, while defendant's betrayal of his  
27 upbringing and ethical education is not necessarily an aggravating  
28 factor warranting an upward variance or departure, neither should his

1 deviation from a law-abiding life be a mitigating factor to warrant a  
2 downward variance or departure from his guidelines sentence.

3 Balancing the aggravating and mitigating factors in this case, a  
4 sentence at the low end of the guidelines range remains appropriate.

5 **VI. CONCLUSION**

6 Based on the above reasons, the government requests that the  
7 Court impose a low-end guidelines sentence of 51 months of  
8 imprisonment, one year of supervised release, and a \$100 special  
9 assessment, and a restitution order of \$11,758,030.98.



**CERTIFICATE OF SERVICE**

I, **T. Montes**, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

☐ Placed in a closed envelope for collection and inter-office delivery, addressed as follows:

☐ Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows:

☐ By hand delivery, addressed as follows:

☒ By email, as follows:

**Elyse Avelar USPO Los Angeles**

**(Roybal), California**

**213-894-6015**

[Elyse Avelar@cacp.uscourts.gov](mailto:Elyse.Avelar@cacp.uscourts.gov)

☐ By messenger, as follows:

☐ By Federal Express, as follows:

This Certificate is executed on December 1, 2023, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/

**T. Montes**

Legal Assistant